ICN Merger Working Group
Long Term Planning, 2011-2016

Mission & Purpose

Since its inception in October 2001, the Merger Working Group (MWG) has successfully developed consensus recommended practices and practical guidance across issues of merger notification, investigation and analysis. As reflected in our mission statement, the Merger Working Group’s mission is to promote the adoption of best practices in the design and operation of merger review regimes in order to: (i) enhance the effectiveness of each jurisdiction’s merger review processes; (ii) facilitate procedural and substantive convergence; and (iii) reduce the public and private time and cost of multi-jurisdictional merger reviews.

In 2010-11, as the ICN enters its second decade, ICN Steering Group Chair John Fingleton called for members to “take stock of what we have done, where we are going, and how we are getting there.” Taking up this challenge, the MWG conducted a comprehensive assessment of the use and impact of its existing work product, and the needs of ICN members going forward. Based on the MWG mission and the input received during this assessment, the MWG will work over the next five years to support the overall ICN mission by (i) promote sound standards and procedures in merger enforcement and policy by member agencies around the world, (ii) formulating proposals for procedural and substantive convergence in merger review, and (iii) seeking ways to facilitate effective international cooperation in merger enforcement to the benefit of member agencies, consumers, and economies worldwide.

In drafting this plan and guiding future work decisions, the MWG is mindful of the following factors: tailoring its work to the audience for its work product; finding a balance between promoting existing work product and creating new work product; finding a balance between work that is ripe for convergence efforts and ongoing cooperative and comparative dialogue; identifying projects that complement the institutional strengths and impact of ICN’s mission and encourage broad member and NGA engagement; and, last but not least, targeting initiatives that are well-suited to ICN’s practical, project-oriented nature.

Overall MWG Goals

- Promote greater international cooperation and convergence in merger review standards to reduce divergent substantive standards and duplicative or inconsistent procedures.
- Enable members to improve the quality of their merger review—i.e., reduce Type 1 errors (seeking to block competitively benign or pro-competitive mergers) as well as Type 2 errors (failing to block or remedy anticompetitive mergers).
- Assist members in finding ways to avoid imposing unnecessary burdens on agencies and business as necessary to achieve goal #1.
- Increase transparency in agency practice to minimize uncertainty and increase predictability in merger review.

The MWG recognizes that these goals are all interrelated.
Working Group Governance

During the period covered by this long-term planning document, the MWG will be chaired by three co-chairs. Each co-chair will serve a staggered three-year term, with one co-chair selected and another stepping down each year. (The outgoing co-chair may, however, be selected for another term). For the 2011-12 ICN year, the MWG will be chaired by the Irish Competition Authority, the U.S. Department of Justice, Antitrust Division, and the Italian Competition Authority. Each year, the co-chairs of the MWG will agree on the organization of work and division of tasks for the coming year.

Strategies for Achieving Goals—2011-2016

1. In assessing future work over the next five years, the MWG will be guided by the following principles:
   a. the MWG will pursue work in new areas that are in high demand by ICN members;
   b. the MWG will take steps to ensure that its most highly valued and used work product materials are appropriately updated;
   c. the MWG will place a high priority on promoting familiarity, implementation, and use of its work product; and
   d. the MWG will prioritize a limited number of high-value projects each year to avoid overburdening ICN members and NGAs participating in its work.

2. In prioritizing work each year, the MWG will work to maintain a balance among different types of work. In the next five years, the MWG will place emphasis on new substantive areas of work in which ICN members are very interested, including:
   a. exploring the potential for updates to or additional Recommended Practices for Merger Analysis (such as additional Recommended Practices on the analysis of efficiencies or non-horizontal mergers);
   b. conducting new work on economic analysis in merger review;
   c. conducting new work on investigative techniques, including work to supplement the Investigative Techniques Handbook;
   d. exploring potential updates to the Merger Guidelines Workbook;
   e. conducting new work on merger remedies issues; and
   f. maintaining, and periodically updating, the merger templates and web links.

   The MWG will also remain flexible to allow room to address other issues, including ways to facilitate and improve cooperation in merger enforcement, as well as new and emerging issues in merger review.

3. In order to promote familiarity, implementation and use of MWG work product over the next five years, the MWG will emphasize:
   a. ICN Merger Workshops, developed in coordination with willing hosts, that focus on promoting familiarity, use, and implementation of MWG work product;
   b. teleseminars/webinars focused on promoting familiarity, implementation, and use of MWG work product;
c. a project to improve the MWG page of the ICN website that may assist in removing barriers to use or implementation of MWG work product by members, and facilitate use of the website by members, NGAs, and other website visitors;

d. coordination with the ICN Curriculum Project to explore the potential development of on-line merger-related training tools, and

e. work that will assist the MWG in assessing the level of use and implementation of MWG work product by ICN members, with a particular emphasis on implementation of the Recommended Practices.

4. The MWG will continue efforts to involve additional ICN members in MWG activities, and to provide participating ICN members with ample opportunities to contribute to its work. The MWG will continue to involve NGAs in MWG activities, and continue efforts to encourage ICN members to invite broad and diverse NGA participation in MWG work.

**Potential Working Group Plans -- 2011-2016**

The above goals and strategies will guide the MWG’s selection of future projects across a range of potential working group outcomes, such as:

**New Work Targeted to Serving Member Interests and Needs**

- An exchange of member experiences and best practices in areas of merger review in which ICN members have indicated a high interest, including the economic analysis of mergers, investigative techniques, the substantive analysis of mergers, and merger remedies. Outputs may include updates to the *Investigative Techniques Handbook*, the *Merger Guidelines Workbook*, and/or other materials; or new work product in the form of practical guidance or reports.
- The development of additional *Recommended Practices for Merger Analysis*, another area in which both ICN members have indicated a high level of interest.
- Experience-sharing or practical guidance work on cooperation among agencies in the review of multi-jurisdictional mergers.
- Work to maintain, and periodically update, the merger templates and web links to promote access to information on ICN’s members’ merger review systems.

**Work to Promote Familiarity, Implementation, and Use of MWG Work Product**

- Workshops and teleseminars/webinars aimed at the staff level to facilitate the building of relationships, the exchange of experience and best practices, and to promote familiarity, use, and implementation of MWG work product.
- Exploring ways in which the MWG can assist members in removing barriers to use and implementation of MWG work product.
- Ongoing work to assess the level of use and implementation of MWG work product, with a particular focus on the *Recommended Practices for Merger Notification and Review Procedures* and the *Recommended Practices for Merger Analysis*. 
Expanding Member and NGA Participation
In conducting its work, the MWG will promote broad member and NGA involvement, recognizing that ICN and MWG work benefits from maximum inclusiveness and participation.

- Target projects that attract expanded participation in the Merger Working Group by ICN members.
- Develop opportunities to broaden the base of NGA participation in MWG activities, and encourage members to invite broad and diverse NGA participation in MWG work.

Timeline

Setting the future direction – 2011-2012.

- In 2011-12, conduct a project to promote better understanding of the role of economic analysis in merger review, with a view to updating, over the longer term, Chapter 4 of the *ICN Investigative Techniques Handbook for Merger Review* on “The Role of Economics and Economic Evidence in Merger Review.”
- Conduct projects to promote familiarity, use, and implementation of MWG work product, including (1) a project focused on improving the Working Group’s web-based tools, (2) teleseminars/webinars focused on MWG work product, and (3) ongoing efforts to assess the level of use and implementation of MWG work product, with a particular focus on the Recommended Practices.
- Consider a potential ICN Merger Workshop focusing on economic analysis issues in merger review.
- Continue to conduct teleconferences/webinars on current merger topics, such as cooperation among agencies in merger review.

Future Work 2012-2016.

- Identify areas of new work in the MWG’s identified areas of emphasis, possibly including additional *Recommended Practices for Merger Analysis*, further work on economic analysis, investigative techniques, and merger remedies, updates to the *Merger Guidelines Workbook*, and maintaining and periodically updating the merger templates and web links.
- Maintain a high ongoing priority on work to promote familiarity, use, and implementation of MWG work product.
- Hold additional merger workshops. In planning future workshops, the MWG will consider the input obtained during the 2010-11 comprehensive assessment on topics that would be useful to cover in future workshops and ways in which workshops might be improved. The MWG will establish the schedule, purpose and content of training materials for future workshops.
- Conduct additional teleseminars/webinars to promote an exchange of experience on topical issues of interest to MWG participants, and to promote familiarity with MWG work product. In planning future teleseminars/webinars, the MWG will consider the input obtained during the 2010-11 comprehensive assessment on topics that would be useful to cover in future teleseminars/webinars and ways in which teleseminars/webinars might be improved.
- Continue efforts to encourage broad and diverse participation by members and NGAs in the MWG.